

Union Calendar No. 423

109TH CONGRESS
2^D SESSION

H. R. 6134

[Report No. 109-704]

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2006

Mr. CANTOR (for himself and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Ways and Means

SEPTEMBER 29, 2006

Additional sponsor: Mr. PAUL

SEPTEMBER 29, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 21, 2006]

A BILL

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Health Opportunity Pa-*
 5 *tient Empowerment Act of 2006”.*

6 **SEC. 2. FSA AND HRA TERMINATIONS TO FUND HSAS.**

7 *(a) IN GENERAL.—Section 106 of the Internal Revenue*
 8 *Code of 1986 (relating to contributions by employer to acci-*
 9 *dent and health plans) is amended by adding at the end*
 10 *the following new subsection:*

11 *“(e) FSA AND HRA TERMINATIONS TO FUND*
 12 *HSAs.—*

13 *“(1) IN GENERAL.—A plan shall not fail to be*
 14 *treated as a health flexible spending arrangement or*
 15 *health reimbursement arrangement under this section*
 16 *or section 105 merely because such plan provides for*
 17 *a qualified HSA distribution.*

18 *“(2) QUALIFIED HSA DISTRIBUTION.—The term*
 19 *‘qualified HSA distribution’ means a distribution*
 20 *from a health flexible spending arrangement or health*
 21 *reimbursement arrangement to the extent that such*
 22 *distribution—*

23 *“(A) does not exceed the lesser of the balance*
 24 *in such arrangement on September 21, 2006, or*
 25 *as of the date of such distribution, and*

1 “(B) is contributed by the employer directly
 2 to the health savings account of the employee be-
 3 fore January 1, 2012.

4 Such term shall not include more than 1 distribution
 5 with respect to any arrangement.

6 “(3) *ADDITIONAL TAX FOR FAILURE TO MAIN-*
 7 *TAIN HIGH DEDUCTIBLE HEALTH PLAN COVERAGE.—*

8 “(A) *IN GENERAL.—If, at any time during*
 9 *the testing period, the employee is not an eligible*
 10 *individual, then the amount of the qualified*
 11 *HSA distribution—*

12 “(i) shall be includible in the gross in-
 13 come of the employee for the taxable year in
 14 which occurs the first month in the testing
 15 period for which such employee is not an el-
 16 igible individual, and

17 “(ii) the tax imposed by this chapter
 18 for such taxable year on the employee shall
 19 be increased by 10 percent of the amount
 20 which is so includible.

21 “(B) *EXCEPTION FOR DISABILITY OR*
 22 *DEATH.—Clauses (i) and (ii) of subparagraph*
 23 *(A) shall not apply if the employee ceases to be*
 24 *an eligible individual by reason of the death of*

1 *the employee or the employee becoming disabled*
 2 *(within the meaning of section 72(m)(7)).*

3 “(4) *DEFINITIONS AND SPECIAL RULES.—For*
 4 *purposes of this subsection—*

5 “(A) *TESTING PERIOD.—The term ‘testing*
 6 *period’ means the period beginning with the*
 7 *month in which the qualified HSA distribution*
 8 *is contributed to the health savings account and*
 9 *ending on the last day of the 12th month fol-*
 10 *lowing such month.*

11 “(B) *ELIGIBLE INDIVIDUAL.—The term ‘eli-*
 12 *gible individual’ has the meaning given such*
 13 *term by section 223(c)(1).*

14 “(C) *TREATMENT AS ROLLOVER CONTRIBU-*
 15 *TION.—A qualified HSA distribution shall be*
 16 *treated as a rollover contribution described in*
 17 *section 223(f)(5).*

18 “(5) *TAX TREATMENT RELATING TO DISTRIBUTU-*
 19 *TIONS.—For purposes of this title—*

20 “(A) *IN GENERAL.—A qualified HSA dis-*
 21 *tribution shall be treated as a payment described*
 22 *in subsection (d).*

23 “(B) *COMPARABILITY EXCISE TAX.—*

1 “(i) *IN GENERAL.*—*Except as provided*
 2 *in clause (ii), section 4980G shall not apply*
 3 *to qualified HSA distributions.*

4 “(ii) *FAILURE TO OFFER TO ALL EM-*
 5 *PLOYEES.*—*In the case of a qualified HSA*
 6 *distribution to any employee, the failure to*
 7 *offer such distribution to any eligible indi-*
 8 *vidual covered under a high deductible*
 9 *health plan of the employer shall (notwith-*
 10 *standing section 4980G(d)) be treated for*
 11 *purposes of section 4980G as a failure to*
 12 *meet the requirements of section 4980G(b).”.*

13 (b) *CERTAIN FSA COVERAGE DISREGARDED COV-*
 14 *ERAGE.*—*Subparagraph (B) of section 223(c)(1) of such*
 15 *Code (relating to certain coverage disregarded) is amended*
 16 *by striking “and” at the end of clause (i), by striking the*
 17 *period at the end of clause (ii) and inserting “, and”, and*
 18 *by inserting after clause (ii) the following new clause:*

19 “(iii) *for taxable years beginning after*
 20 *December 31, 2006, coverage under a health*
 21 *flexible spending arrangement during any*
 22 *period immediately following the end of a*
 23 *plan year of such arrangement during*
 24 *which unused benefits or contributions re-*
 25 *maining at the end of such plan year may*

1 *be paid or reimbursed to plan participants*
 2 *for qualified benefit expenses incurred dur-*
 3 *ing such period if—*

4 “(I) *the balance in such arrange-*
 5 *ment at the end of such plan year is*
 6 *zero, or*

7 “(II) *the individual is making a*
 8 *qualified HSA distribution (as defined*
 9 *in section 106(e)) in an amount equal*
 10 *to the remaining balance in such ar-*
 11 *rangement as of the end of such plan*
 12 *year, in accordance with rules pre-*
 13 *scribed by the Secretary.”.*

14 (c) *APPLICATION OF SECTION.—*

15 (1) *SUBSECTION (a).—The amendment made by*
 16 *subsection (a) shall apply to distributions on or after*
 17 *the date of the enactment of this Act.*

18 (2) *SUBSECTION (b).—The amendment made by*
 19 *subsection (b) shall take effect on the date of the en-*
 20 *actment of this Act.*

21 **SEC. 3. REPEAL OF ANNUAL DEDUCTIBLE LIMITATION ON**
 22 **HSA CONTRIBUTIONS.**

23 (a) *IN GENERAL.—Paragraph (2) of section 223(b) of*
 24 *the Internal Revenue Code of 1986 (relating to monthly lim-*
 25 *itation) is amended—*

1 (1) in subparagraph (A) by striking “the lesser
2 of—” and all that follows and inserting “\$2,250.”,
3 and

4 (2) in subparagraph (B) by striking “the lesser
5 of—” and all that follows and inserting “\$4,500.”.

6 (b) CONFORMING AMENDMENT.—Section
7 223(d)(1)(A)(ii)(I) of such Code is amended by striking
8 “subsection (b)(2)(B)(ii)” and inserting “subsection
9 (b)(2)(B)”.

10 (c) *EFFECTIVE DATE.*—The amendments made by this
11 section shall apply to taxable years beginning after Decem-
12 ber 31, 2006.

13 **SEC. 4. MODIFICATION OF COST-OF-LIVING ADJUSTMENT.**

14 Paragraph (1) of section 223(g) of the Internal Rev-
15 enue Code of 1986 (relating to cost-of-living adjustment) is
16 amended by adding at the end the following new flush sen-
17 tence:

18 “In the case of adjustments made for any taxable year
19 beginning after 2007, section 1(f)(4) shall be applied
20 for purposes of this paragraph by substituting ‘March
21 31’ for ‘August 31’, and the Secretary shall publish
22 the adjusted amounts under subsections (b)(2) and
23 (c)(2)(A) for taxable years beginning in any calendar
24 year no later than June 1 of the preceding calendar
25 year.”.

1 **SEC. 5. CONTRIBUTION LIMITATION NOT REDUCED FOR**
 2 **PART-YEAR COVERAGE.**

3 *(a) INCREASE IN LIMIT FOR INDIVIDUALS BECOMING*
 4 *ELIGIBLE INDIVIDUALS AFTER BEGINNING OF THE*
 5 *YEAR.*—Subsection (b) of section 223 of the Internal Rev-
 6 *enue Code of 1986 (relating to limitations) is amended by*
 7 *adding at the end the following new paragraph:*

8 *“(8) INCREASE IN LIMIT FOR INDIVIDUALS BE-*
 9 *COMING ELIGIBLE INDIVIDUALS AFTER THE BEGIN-*
 10 *NING OF THE YEAR.*—

11 *“(A) IN GENERAL.*—For purposes of com-
 12 *puting the limitation under paragraph (1) for*
 13 *any taxable year, an individual who is an eligi-*
 14 *ble individual during the last month of such tax-*
 15 *able year shall be treated—*

16 *“(i) as having been an eligible indi-*
 17 *vidual during each of the months in such*
 18 *taxable year, and*

19 *“(ii) as having been enrolled, during*
 20 *each of the months such individual is treat-*
 21 *ed as an eligible individual solely by reason*
 22 *of clause (i), in the same high deductible*
 23 *health plan in which the individual was en-*
 24 *rolled for the last month of such taxable*
 25 *year.*

1 “(B) *FAILURE TO MAINTAIN HIGH DEDUCT-*
2 *IBLE HEALTH PLAN COVERAGE.*—

3 “(i) *IN GENERAL.*—*If, at any time*
4 *during the testing period, the individual is*
5 *not an eligible individual, then—*

6 “(I) *gross income of the indi-*
7 *vidual for the taxable year in which*
8 *occurs the first month in the testing*
9 *period for which such individual is not*
10 *an eligible individual is increased by*
11 *the aggregate amount of all contribu-*
12 *tions to the health savings account of*
13 *the individual which could not have*
14 *been made but for subparagraph (A),*
15 *and*

16 “(II) *the tax imposed by this*
17 *chapter for any taxable year on the in-*
18 *dividual shall be increased by 10 per-*
19 *cent of the amount of such increase.*

20 “(ii) *EXCEPTION FOR DISABILITY OR*
21 *DEATH.*—*Subclauses (I) and (II) of clause*
22 *(i) shall not apply if the individual ceased*
23 *to be an eligible individual by reason of the*
24 *death of the individual or the individual be-*

1 *coming disabled (within the meaning of sec-*
 2 *tion 72(m)(7)).*

3 “(iii) *TESTING PERIOD.*—*The term*
 4 *‘testing period’ means the period beginning*
 5 *with the last month of the taxable year re-*
 6 *ferred to in subparagraph (A) and ending*
 7 *on the last day of the 12th month following*
 8 *such month.’.*

9 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 10 *section shall apply to taxable years beginning after Decem-*
 11 *ber 31, 2006.*

12 **SEC. 6. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO**
 13 **MAKE COMPARABLE HEALTH SAVINGS AC-**
 14 **COUNT CONTRIBUTIONS.**

15 (a) *IN GENERAL.*—*Section 4980G of the Internal Rev-*
 16 *enue Code of 1986 (relating to failure of employer to make*
 17 *comparable health savings account contributions) is amend-*
 18 *ed by adding at the end the following new subsection:*

19 “(d) *EXCEPTION.*—*For purposes of applying section*
 20 *4980E to a contribution to a health savings account of an*
 21 *employee who is not a highly compensated employee (as de-*
 22 *finied in section 414(q)), highly compensated employees shall*
 23 *not be treated as comparable participating employees.’.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
 2 *section shall apply to taxable years beginning after Decem-*
 3 *ber 31, 2006.*

4 **SEC. 7. ONE-TIME DISTRIBUTION FROM INDIVIDUAL RE-**
 5 **TIREMENT PLANS TO FUND HSAS.**

6 (a) *IN GENERAL.*—*Subsection (d) of section 408 of the*
 7 *Internal Revenue Code of 1986 (relating to taxability of*
 8 *beneficiary of employees’ trust) is amended by adding at*
 9 *the end the following new paragraph:*

10 “(9) *DISTRIBUTION FOR HEALTH SAVINGS AC-*
 11 *COUNT FUNDING.*—

12 “(A) *IN GENERAL.*—*In the case of an indi-*
 13 *vidual who is an eligible individual (as defined*
 14 *in section 223(c)) and who elects the application*
 15 *of this paragraph for a taxable year, gross in-*
 16 *come of the individual for the taxable year does*
 17 *not include a qualified HSA funding distribu-*
 18 *tion to the extent such distribution is otherwise*
 19 *includible in gross income.*

20 “(B) *QUALIFIED HSA FUNDING DISTRIBUTION.*—*For purposes of this paragraph, the term*
 21 *‘qualified HSA funding distribution’ means a*
 22 *distribution from an individual retirement plan*
 23 *(other than a plan described in subsection (k) or*
 24 *(p)) of the employee to the extent that such dis-*
 25

1 *tribution is contributed to the health savings ac-*
 2 *count of the individual in a direct trustee-to-*
 3 *trustee transfer.*

4 “(C) *LIMITATIONS.—*

5 “(i) *MAXIMUM DOLLAR LIMITATION.—*

6 *The amount excluded from gross income by*
 7 *subparagraph (A) shall not exceed the excess*
 8 *of—*

9 “(I) *the annual limitation under*
 10 *section 223(b) computed on the basis of*
 11 *the type of coverage under the high de-*
 12 *ductible health plan covering the indi-*
 13 *vidual at the time of the qualified*
 14 *HSA funding distribution, over*

15 “(II) *in the case of a distribution*
 16 *described in clause (ii)(II), the amount*
 17 *of the earlier qualified HSA funding*
 18 *distribution.*

19 “(ii) *ONE-TIME TRANSFER.—*

20 “(I) *IN GENERAL.—Except as pro-*
 21 *vided in subclause (II), an individual*
 22 *may make an election under subpara-*
 23 *graph (A) only for one qualified HSA*
 24 *funding distribution during the life-*

1 *time of the individual. Such an elec-*
2 *tion, once made, shall be irrevocable.*

3 “(II) *CONVERSION FROM SELF-*
4 *ONLY TO FAMILY COVERAGE.—If a*
5 *qualified HSA funding distribution is*
6 *made during a month in a taxable*
7 *year during which an individual has*
8 *self-only coverage under a high deduct-*
9 *ible health plan as of the first day of*
10 *the month, the individual may elect to*
11 *make an additional qualified HSA*
12 *funding distribution during a subse-*
13 *quent month in such taxable year dur-*
14 *ing which the individual has family*
15 *coverage under a high deductible health*
16 *plan as of the first day of the subse-*
17 *quent month.*

18 “(D) *FAILURE TO MAINTAIN HIGH DEDUCT-*
19 *IBLE HEALTH PLAN COVERAGE.—*

20 “(i) *IN GENERAL.—If, at any time*
21 *during the testing period, the individual is*
22 *not an eligible individual, then the aggre-*
23 *gate amount of all contributions to the*
24 *health savings account of the individual*
25 *made under subparagraph (A)—*

1 “(I) shall be includible in the
2 gross income of the individual for the
3 taxable year in which occurs the first
4 month in the testing period for which
5 such individual is not an eligible indi-
6 vidual, and

7 “(II) the tax imposed by this
8 chapter for any taxable year on the in-
9 dividual shall be increased by 10 per-
10 cent of the amount which is so includ-
11 ible.

12 “(ii) *EXCEPTION FOR DISABILITY OR*
13 *DEATH.*—Subclauses (I) and (II) of clause
14 (i) shall not apply if the individual ceased
15 to be an eligible individual by reason of the
16 death of the individual or the individual be-
17 coming disabled (within the meaning of sec-
18 tion 72(m)(7)).

19 “(iii) *TESTING PERIOD.*—The term
20 ‘testing period’ means the period beginning
21 with the month in which the qualified HSA
22 funding distribution is contributed to a
23 health savings account and ending on the
24 last day of the 12th month following such
25 month.

1 “(E) *APPLICATION OF SECTION 72.*—Not-
2 withstanding section 72, in determining the ex-
3 tent to which an amount is treated as otherwise
4 includible in gross income for purposes of sub-
5 paragraph (A), the aggregate amount distributed
6 from an individual retirement plan shall be
7 treated as includible in gross income to the ex-
8 tent that such amount does not exceed the aggre-
9 gate amount which would have been so includible
10 if all amounts from all individual retirement
11 plans were distributed. Proper adjustments shall
12 be made in applying section 72 to other distribu-
13 tions in such taxable year and subsequent tax-
14 able years.”.

15 (b) *COORDINATION WITH LIMITATION ON CONTRIBU-*
16 *TIONS TO HSAS.*—Section 223(b)(4) of such Code (relating
17 to coordination with other contributions) is amended by
18 striking “and” at the end of subparagraph (A), by striking
19 the period at the end of subparagraph (B) and inserting
20 “, and”, and by inserting after subparagraph (B) the fol-
21 lowing new subparagraph:

22 “(C) the aggregate amount contributed to
23 health savings accounts of such individual for
24 such taxable year under section 408(d)(9) (and

1 *such amount shall not be allowed as a deduction*
2 *under subsection (a)).”.*

3 *(c) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to taxable years beginning after Decem-*
5 *ber 31, 2006.*

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A BILL

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

SEPTEMBER 29, 2006

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